

High Court

judgments:

October - November 2009



CONSTITUTIONAL LAW

- *Judicial power*
- *State courts*
- *Kable*
- *Whether State Court compromised by wielding executive power*
- *Provisions in State criminal asset seizure legislation directing how court to proceed*

In *International Finance Trust Company v NSW Crime Commission* [2009] HCA 49; 12 Nov 09 the High Court by majority concluded that provisions of the Criminal Asset Recovery Act 1990 (NSW) which required the Supreme Court to make restraining orders without notice to those affected were invalid as the Act impermissibly directed the court how to exercise its jurisdiction contrary to the need for State Courts to be independent to comply with Constitution Part III as explained in *Kable v DPP* [1996] HCA 24; French CJ; Gummow with Bell JJ; Heydon J; contra Heydon, Crennan, Kiefel JJ. Appeal allowed.

NEGLIGENCE

- *Duty of care*
- *Duty of publican to driving patron*
- *Whether duty - patron killed in motorcycle accident after leaving hotel*
- *Whether any duty breached or any breach caused loss*

In *C.A.L. No 14 Pty Ltd v Motor Accidents Insurance Board (Tas)* [2009] HCA 47; 10 Nov 09 a drinker at a Tasmanian hotel died while driving his motorcycle home from

the hotel where he had been drinking for some time. The deceased had come to an arrangement with the licensee that his motorcycle would be locked away so he could not drive it home without his wife being telephoned to collect him. However he was given the keys without his wife being telephoned. The High Court concluded that the licensee of premises did not owe a duty of care to prevent patrons driving away from the premise in an intoxicated state: French CJ agreeing with Gummow, Haydon, Crennan JJ jointly; sim Hayne J. They also concluded if there was a duty it had not been breached and if there was a breach it had not caused the death. The matter preceded the Civil Liability Act 2002 (Tas). Appeals allowed.

NEGLIGENCE

- *Duty of care*
- *Duty of licensee of licensed premises to have security to prevent shooting of patron*

In *Adeels Palace Pty Ltd v Moubarak* [2009] HCA 48; 10 Nov 09 the High Court in a joint judgement concluded that the operator of licensed premises was not liable in negligence after the commencement of the Civil Liability Act 2002 (NSW) for failing to have security that might have prevented a patron being shot by another patron: French CJ, Gummow, Hayne, Heydon, Crennan JJ jointly. Consideration of the causation provisions in s 5D(1) of the Civil Liability Act. Appeal allowed.

Federal Court judgments

INDUSTRIAL LAW

- *Workplace agreement*
- *Income protection for employees*

In *Australian Maritime Officers Union v Sydney Ferries Corp* [2009] FCAFC 145; 15 Oct 09 a Full Court allowed an appeal on finding that a clause in a workplace agreement that required the employer insure the employees for loss of income was a matter that did pertain to the employment relationship as defined by regulations under s 356(1)(f) of the *Workplace Relations Act 1966 (Cth)*.

INCOME TAX

- *Foreign entities*

In *C of T v Tasman Group Services Pty Ltd* [2009] FCAFC 148; 22 Oct 09 a Full Court considered whether a Japanese corporation had the "necessary connection to Australia" for the purposes of the GST legislation.

CONTEMPT

- *Contempt in the face of the court*

In *Clampett v A-Gen for C of A* [2009] FCAFC 151; 28 Oct 09 a Full Court reviewed authority as to when a Federal Magistrate should exercise the discretion given by s 17(3) of the *Federal Magistrate's Court Act 1999 (Cth)* and hear charges for contempt of court in the face of the court that occurred before that magistrate.

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INCOME TAX

- **Deductions**
- **Costs of study deductible for Youth Allowance**

In *C of T v Anstis* [2009] FCAFC 154; 4 Nov 09 a Full Court held a taxpayer who was enrolled as a full time student in a teaching course at a university and in receipt of Youth Allowance in the sum of \$3622 was entitled to deduct various expenses incurred in attending the university including supplies for teaching rounds, Student Administration fee, computer depreciation and textbooks under s 8-1 of the *ITAA 1997* (Cth).

PRACTICE

- **Leave to appeal against answer to preliminary question**

In *QBE Insurance (Australia) Ltd v Tropical Reef Shipyard Pty Ltd* [2009] FCAFC 161; 12 Nov 09 a Full Court concluded leave to appeal against the determination

of a separate question before trial would be refused as there would not be any injustice.

CORPORATIONS

- **Whether a funded class action constitutes a managed Investment Scheme**

In *Brookfield Multiplex Ltd v International Litigation Funding Partners Pte Ltd* [2009] FCAFC 147; 20 Oct 09 a Full Court concluded (Sundberg with Dowsett JJ; contra Jacobson J) that a funded class action constitutes a Managed investment Scheme under s 9 and Chp 5C of the *Corporations Act 2001* (Cth).

LAND RIGHTS

- **Issue estoppel**

In *Quall v NT* [2009] FCAFC 157; 11 Nov 09 a claim for native title was divided so that part A was considered before part B. The primary judge found that as the

claim for recognition of native title had been rejected for part A by virtue of issue estoppel it would also fail for part B. This conclusion was upheld by the Full Court. Consideration of the role of issue estoppel in native title claims. Appeal against summary dismissal dismissed.

MIGRATION

- **Condition 8202**

In *Maan v MIC* [2009] FCAFC 150; 23 Oct 09 a Full Court considered whether the version of condition 8202 in force before or after 1 July 2007 applied to the decision to cancel the appellant's class 573 visa. It also considered whether exceptional circumstances existed within reg 2.43(2) of the *Migration (1993) Regs*.

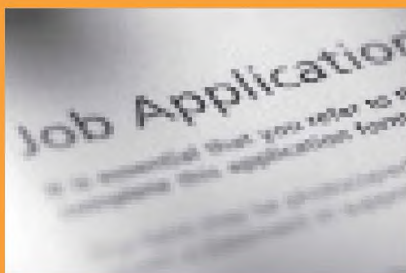
MIGRATION

- **MRT**
- **Power of the MRT to remit**
- **Whether direction required**
- **Failure to enquire**

In *MIC v Dhanoa* [2009] FCAFC 153; 30 Oct 09 a Full Court by majority considered what directions the MRT may make when remitting a matter and when the MRT unreasonably fails to make enquiries. Appeal against decision of Federal Magistrate who found jurisdictional error in MRT for remitting with directions allowed by majority: Jagot and Foster JJ; contra Moore J). The court noted the decision of the FMC on the need to make enquiries relied on earlier decisions overturned by the High Court in *MIC v SZA I* [2009] HCA 39. ↓

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